

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RANDELL B. NEALY,

Plaintiff,

v.

VETERANS AFFAIRS HOSPITAL,

Defendant.

CASE NO. C22-0136-JCC

ORDER

On February 9, 2022, the Honorable Brian A. Tsuchida, United States Magistrate Judge, granted Plaintiff's motion to proceed *in forma pauperis*. (Dkt. No. 1.) Plaintiff filed a Federal Tort Claims Act ("FTCA") action alleging medical malpractice against the United States of America and Seattle Veterans Affairs Hospital ("VAH") for care received at the VAH between late 2016 and April 2019. (Dkt. No. 5.) Specifically, the complaint alleges that VAH made diagnostic errors while treating Plaintiff's gastrointestinal ailment. (*Id.* at 14.) Plaintiff seeks \$342,000 in damages from Defendants for two and half years of pain and suffering due to various significant physical symptoms he allegedly suffered. (*Id.*)

The Court must dismiss before service a complaint filed *in forma pauperis* if it "fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(ii)–(iii) (section numbering omitted); *see Lopez v. Smith*, 203 F.3d 1122, 1229 (9th Cir. 2000).

1 Under the doctrine of sovereign immunity, the United States is immune from suit for  
2 damages except where Congress has expressly waived its immunity. *See Lehman v. Nakshian*,  
3 453 U.S. 156, 160 (1981). Sovereign immunity can be a perplexing concept for those unfamiliar  
4 with it, because it contradicts the general principle that people can sue those who injure them.

5 The FTCA contains a limited waiver of sovereign immunity. *See* 28 U.S.C. § 1346(b). It  
6 provides federal district courts with exclusive jurisdiction over civil actions for damages against  
7 the United States for injuries caused by the negligent or wrongful conduct of its agents or  
8 employees acting within the scope of their employment to the extent that a private party would  
9 be liable under state law. 28 U.S.C. § 1346(b)(1). Under 38 U.S.C. § 7316(a), the FTCA is the  
10 exclusive remedy for negligence or medical malpractice claims associated with treatment from  
11 Veterans Health Administration health care personnel. *See Tunac v. United States*, 897 F.3d  
12 1197, 1204–05 (9th Cir. 2018); *Cavezza v. Metcalf*, 260 F. Supp. 3d 823, 827 (E.D. Ky. 2017).  
13 The United States is the proper defendant in such cases. *Id.*

14 However, “[t]he FTCA bars claimants from bringing suit in federal court until they have  
15 exhausted their administrative remedies.” *McNeil v. United States*, 508 U.S. 106, 113 (1993).  
16 Before filing suit against the Government, a plaintiff must present an administrative tort claim to  
17 the “appropriate federal agency” within two years after the claim accrues. 28 U.S.C. §§ 2401(b),  
18 2675(a). If that agency denies the claim in writing or fails to dispose it of within six months, the  
19 claimant can initiate a federal action. 28 U.S.C. § 2675(a).

20 Here, Plaintiff fails to show that he has provided written notice of his claims to the  
21 Department of Veterans Affairs, or that the agency denied his claim in writing, or failed to  
22 dispose of his claim within six months of filing. Accordingly, the Court must dismiss Plaintiff’s  
23 complaint under § 1915(e), because, until Plaintiff exhausts his administrative remedies, his  
24 lawsuit seeks relief against a defendant that is immune.

25 For the foregoing reasons, Plaintiff’s complaint (Dkt. No. 5) is DISMISSED without  
26 prejudice, and his motion to appoint counsel (Dkt. No. 6) is DENIED as moot.

1 DATED this 14th day of February 2022.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour  
UNITED STATES DISTRICT JUDGE